

Commonwealth of Massachusetts  
The Trial Court  
Juvenile Court Department

STANDING ORDER 2-04  
ELECTRONIC RECORDING OF COURT PROCEEDINGS

A. Official Recordings.

1. When required. In all divisions of the Juvenile Court Department all courtroom proceedings shall be recorded electronically, subject to the availability and functioning of appropriate recording devices, except that the following may but need not be recorded: (a) the call of the list and similar matters of an administrative nature; and (b) proceedings conducted by a magistrate other than a judge. Said recording shall take place whether or not a court stenographer is present in the courtroom.

2. Logging. During every proceeding which is required to be recorded, the clerk shall: (a) announce clearly the name of the case and its docket number at the beginning of the proceeding; and (b) note, whenever practicable, on the case papers or in a separate log the cassette number and the index numbers representing the beginning and end points of the proceeding.

3. Counsel's responsibility. Counsel shall be responsible for assisting in the creation of an audible record by properly using the microphones provided. Counsel shall speak with sufficient clarity and in sufficient proximity to the microphones to ensure an audible record, and shall be responsible for requesting the judge, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to ensure an audible record.

4. Preservation of tapes. The clerk-magistrate shall preserve for at least three years the original recording of any trial, evidentiary hearing, guilty plea or admission to sufficient facts that was presided over by a judge.

5. Access to cassette copies.

(a) Open proceedings. Any person whether or not a party, shall be permitted to obtain a cassette copy of an original recording, or any portion thereof, of any proceeding which was open to the public, unless the record of such proceeding has been sealed or impounded.

(b) Closed proceedings. The original recording of a proceeding which was not open to the public, or of a proceeding whose record has been sealed or impounded, shall be deemed to be impounded and a cassette copy of the original recording, or any portion thereof, shall be made

available only in accordance with the following provisions:

(i) Cassette copies of closed proceedings for purposes of appeal. Counsel for any party, or any party who has entered an appearance *pro se*, shall be permitted to obtain a cassette copy of such a proceeding upon certifying that such cassette copy will be used solely for an appeal, or to determine whether to claim an appeal, in the same matter. Unless the judge who presided over the proceeding has ordered otherwise, the clerk-magistrate shall provide such cassette copy upon such certification without requiring a judge's approval of the request.

(ii) Cassette copies of closed proceedings for other purposes. A cassette copy of such a proceeding may be made available to other persons or for other purposes only with the approval of the judge who presided over the proceeding or, if that judge is unavailable for an extended period or the proceeding was conducted by a magistrate other than a judge, any judge of the court. Any such request shall be accompanied by an affidavit, setting forth the reason for the request and the specific use to be made of the cassette copy, and shall be served on all parties to the proceeding. Any other party or interested person may file a statement in support of or in opposition to such a request. A judge may determine such a request with or without hearing wherever he or she is then sitting. A judge may permit access subject to appropriate restrictions upon the use and dissemination of the cassette copy of such proceeding.

(c) Ordering cassette copies. A request for a cassette copy shall be filed with the clerk-magistrate on a form prescribed by the Chief Justice of the Juvenile Court. In order that multiple cassette copies may be made simultaneously whenever possible, any person making such a request regarding a proceeding that is presently pending on appeal shall certify that he has notified all other parties of his request.

The cost of a cassette copy shall be as established by the Chief Administrative Justice of the Trial Court pursuant to G.L. c. 262, s. 4B. The clerk-magistrate may require prepayment of all or some portion of such cost. There shall be no cost for a cassette copy produced for the use of the court, the Attorney General's office, a district attorney's office, any other agency of the Commonwealth, a police prosecutor, or a party represented by an attorney provided by the Committee for Public Counsel Services. General Laws c. 261, ss. 27A-27G shall apply to any request on behalf of an indigent party who is not represented by an attorney provided by the Committee for Public Counsel Services, and in such case the cost of a cassette copy shall be deemed an "extra cost" as defined in s. 27A.

6. Impermissible uses. No cassette copy shall be used for a commercial purpose, for public or private entertainment or amusement, or for any other purpose detrimental to the administration of justice. No cassette copy shall be duplicated or tampered with. No cassette copy shall be erased, nor its labels removed or defaced, while the matter is pending in any court, or is subject to direct appellate review. Any cassette copy which is thereafter erased shall be erased in its entirety.

Any further dissemination of the cassette copy of a closed proceeding, or its contents, is permissible only: (a) for the purposes for which access was permitted; (b) subject to all provisions of law and court rules governing the records of such closed proceedings; and (c) subject to any additional restrictions with regard to its use which have been prescribed by the judge permitting access.

Any person requesting a cassette copy shall take all reasonable precautions to assure compliance with the requirements of this rule, including notifying anyone permitted to use the cassette copy of such requirements. Any person violating any such requirement shall be subject to appropriate sanctions, including contempt proceedings.

#### B. Unofficial recordings.

1. Covert recording forbidden. No person shall make any electronic recording in any courtroom, hearing room, office, chambers or lobby of a judge or magistrate without prior authorization from the judge or magistrate then having immediate supervision over such place.

2. Recording by the news media. The recording by the news media of a proceeding open to the public is governed by the provisions of Supreme Judicial Court Rule 1:19.

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Martha P. Grace  
Chief Justice

Dated: October 13, 2004